

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 20, 2026*

Decided May 21, 2026

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

REBECCA TAIBLESON, *Circuit Judge*

No. 25-2197

DA VANG,
Plaintiff-Appellant,

v.

HEIDI MELLENBERGER,
Defendant-Appellee.

Appeal from the United States District
Court for the Western District of
Wisconsin.

No. 23-cv-828-jdp

James D. Peterson,
Chief Judge.

ORDER

Da Vang, a Wisconsin prisoner, appeals the district court's grant of summary judgment rejecting his First Amendment claim. He asserted that a prison official retaliated against him for corresponding with the governor of Wisconsin about a social

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

worker's alleged misconduct. The district court concluded that Vang's claim was barred by qualified immunity. We affirm.

I.

In 2023, Vang wrote to the governor of Wisconsin to complain about misconduct by a social worker at Stanley Correctional Institution. In the message, Vang accused the social worker, first, of having a sexual relationship with another prisoner and, second, of denying him—an Asian man—the preferential treatment she gave black prisoners. He asked the governor to intervene to remedy these issues. Vang had raised these allegations the previous year in an internal grievance, which led to him being punished with 15 days in disciplinary segregation for lying and disrespect.

The governor's office forwarded Vang's message to the Wisconsin Department of Corrections. Heidi Mellenberger, a unit supervisor, was asked to investigate the allegations as a possible concern under the Prison Rape Elimination Act, 42 U.S.C. §§ 30301–30309. Mellenberger's investigation turned up discrepancies in Vang's version of events, so she wrote a conduct report that accused him of lying, disparaging the social worker's integrity, and putting the social worker at risk of harm from other prisoners. A prison disciplinary committee found Vang guilty of lying about an employee, WIS. ADMIN. CODE DOC § 303.32, and punished him with 30 days in disciplinary segregation.

Ten months later, Vang sued Mellenberger for retaliating against him, in violation of the First Amendment, because of the message he sent to the governor's office. *See* 42 U.S.C. § 1983. Further proceedings ensued, and Mellenberger moved for summary judgment, arguing (1) that Vang had not identified any evidence that would permit a reasonable jury to find that his protected speech was a motivating factor in her decision to issue a conduct report and (2) that she was entitled to qualified immunity.

The district court granted Mellenberger's motion. The court first indicated that Vang likely made out a *prima facie* case of retaliation. Mellenberger conceded the first two elements of retaliation—that Vang's communication with the governor is protected conduct and that a person of ordinary firmness could be deterred by the deprivation in question, here a 30-day segregation sentence. And the third element was met, the court determined, because Vang's communication with the governor was a motivating factor in Mellenberger's decision to take retaliatory action. *See Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009). But the court went on to conclude that Mellenberger's actions were protected by qualified immunity because Vang's rights were not clearly established by

law. The court determined that “an officer in Mellenberger’s position wouldn’t have clearly understood that punishing Vang for an investigation-seeking complaint to the governor’s office violated Vang’s First Amendment’s rights”

II.

Whether qualified immunity applies to a government official’s actions is often a question of law that we review *de novo*. *Nielsen v. Sexton*, 168 F.4th 968, 989 (7th Cir. 2026). Qualified immunity shields a government official performing discretionary functions from liability for civil damages insofar as her conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). There are two parts to a qualified-immunity analysis that may be considered in any order. First, do the alleged facts show that the officer’s conduct violated a constitutional right? Second, is that right clearly established? *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018). We start our analysis with the second step to avoid unnecessarily deciding the constitutional question. *See Reichle v. Howards*, 566 U.S. 658, 663–64 (2012). To show that a law is clearly established, Vang must identify a case that every reasonable official would interpret to establish the particular rule, except in the rare case of an obvious constitutional violation. *Wesby*, 583 U.S. at 63–64.

Vang argues that Supreme Court precedent has clearly established that the First Amendment prohibits prison staff from retaliating for the content of prisoners’ outgoing mail, such as his message to the governor. He cites *Procunier v. Martinez*, which struck down a California regulation that allowed prison staff to censor prisoners’ correspondence if it unduly complained, magnified grievances, or defamed others, among other restrictions. 416 U.S. 396, 399–400, 415 (1974). “Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements.” *Id.* at 413.

Mellenberger counters that *Martinez* does not apply here. She invokes our decision in *Hale v. Scott*, 371 F.3d 917 (7th Cir. 2004), in which we held, without any discussion of *Martinez*, that a prisoner’s libelous allegation in a prison grievance about a prison guard’s sexual misconduct was unprotected by the First Amendment. *Hale*, however, involved an internal prison grievance rather than outgoing correspondence like Vang’s. Indeed, the Supreme Court later limited *Martinez* to apply only to outgoing mail. *See Felton v. Brown*, 129 F.4th 999, 1011 (7th Cir. 2025) (citing *Thornburgh v. Abbott*, 490 U.S. 401, 413–14 (1989)).

Hale, though, not only casts doubt on the applicability of *Martinez* to this case but also reflects that the law in this area is unsettled so as to make qualified immunity available. In light of *Hale*, not every reasonable officer would interpret *Martinez* to prohibit an official from disciplining Vang for his message to the governor. A reasonable officer in Mellenberger's position could have viewed Vang's message to resemble more closely the internal grievance in *Hale* than the outgoing mail in *Martinez*. For instance, the message sought relief similar to what a prisoner could seek in an internal grievance, and Vang sent it to the head of the executive branch, who is responsible for prison operations. Granted, other reasonable officers could reach the opposite conclusion, such as the prison's disciplinary committee here that described sending the message to the governor as "clearly outside of the normal complaint review system." But because not "every reasonable official" would see it that way, *Wesby*, 583 U.S. at 63, we conclude that Mellenberger's actions were protected by qualified immunity. We therefore do not reach the ultimate constitutional question in this case.

AFFIRMED